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RIGHTS AND DUTIES OF AUTOMOBILE DRIVER WHEN MEETING AND PASSING HORSE-DRAWN VEHICLES.

INTRODUCTORY.

All persons have equal right to use the public highways for purposes of travel by proper means;[1] and all alike must exercise reasonable care for the safety of others.[2]

The driver of a horse-drawn vehicle has no rights in the highway superior to the rights of the driver of an automobile; both have the right to go upon the public highway, and each is restricted in the exercise of his rights by the corresponding rights of the other, and each is entitled to regulate his use of the highways by the observance of ordinary prudence under all circumstances.[3]

It is the duty of drivers of every kind of vehicle to watch ahead for other vehicles, so that injury to others as well as themselves may be avoided.

Sometimes by statutory provision operators of automobiles are required to keep "a vigilant watch for all vehicles drawn by animals."[4] The term "vigilant watch," as so used, is held to include, not only the task of looking ahead for animal-drawn vehicles, but while approaching them, to keep a sharp lookout for exhibitions by such animals of fright or uneasiness which, if disregarded, might endanger the lives or safety of human beings.[5]

In view of the duty to exercise due care which is imposed upon every traveler, one making use of the highways may assume that others on the highways will exercise due care, and he is not neg-

1. Butler *v.* Cabe, Ark., 1914, 171 S. W. 1190, L. R. A. 1915 C, 702.
2. Farnsworth *v.* Tampa Electric Co., 62 Fla., 166, 57 So. 233.
3. Tyler *v.* Hoover, 92 Neb. 221, 138 N. W. 128.
4. R. S. Mo. 1099, Sec. 8517.
5. Roberts *v.* Trunk, 179 Mo. App. 358, 166 S. W. 841.

ligent in acting accordingly, in the absence of notice or knowledge to the contrary.[6]

STATUS OF AUTOMOBILE ON THE HIGHWAY.

Soon after the appearance of the automobile upon the highways as a vehicle of pleasure and commerce, it was declared not to be a nuisance, and not inherently dangerous.[7] And it is now beyond question that it is a proper means of conveyance on the public highways.[8]

Consequently, no liability is imposed on the automobile operator on account of the character of his vehicle.[9]

But the driver of an automobile has no greater right in the use of the highways than the driver of any other kind of conveyance,[10] and usually, in view of numerous statutes and ordinances regulating the use of automobiles, his obligations and duties are greater and more numerous than the driver of vehicles drawn by animals.

The operator of an automobile has the right to assume and to act upon the assumption that every other person traveling on the highway will exercise ordinary care and caution according to the circumstances.[11]

FRIGHTENING HORSES.

When meeting persons driving horses that show signs of fright it is the duty of the operator of an automobile to do whatever is reasonably necessary to prevent injury, aside from any statutory requirements; and this without reference to any negligence on the part of the persons he is meeting.[12] This duty he owes to the driver of horses, whether the highway on which they meet is a public or private one, and even though the driver or horses is a mere licensee, or even a trespasser, and the operator a lawful user of the highway.[13]

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6. Slaughter *v.* Goldberg, Bowen & Co., Cal. App., 1915, 147 Pac. 90.
7. Berry, Law of Automobiles, Secs. 19, 20.
8. Butler *v.* Cabe, Ark., 1914, 171 S. W. 1190, L. R. A. 1915 C, 702.
9. Riley *v.* Fisher, Tex. Civ. App., 1911, 146 S. W. 581.
10. Shore *v.* Ferguson, 142 Ga., 657, 83 S. E. 518.
11. Campbell *v.* Walker, 2 Boyce (Del.) 41, 78 Atl. 601.
12. McIntyre *v.* Orner, 166 Ind. 57, 68, 76 N. E. 750.
13. Knight *v.* Lanier, 69 App. Div. 454, 74 N. Y. Supp. 999.

However, the tact that a horse becomes frightened by an automobile upon the highway does not render the operator of such vehicle liable for resulting injury, as the horse has no paramount or exclusive right to the road. But if he sees that a horse which he is meeting is restive and frightened, it is his duty, regardless of statute, to take such course to avoid causing an injury as the dictates of ordinary prudence may demand. He should reduce the speed of his car, or stop it, if so requested or if he sees that this is necessary to avoid an accident, or do whatever a reasonably prudent man would do in the circumstances.[14] The operator must use good judgment and be guided by the exigencies of the occasion. It may be necessary not only to stop the automobile at the side of the road to allow the horse-drawn vehicle to pass, but to stop the running of the motive power to prevent frightening the horses by the noise.[15]

Where the operator sees that a team he is approaching are becoming frightened at his machine and are liable to run away, and he increases the speed and noise of his machine and continues to approach them, his conduct is negligent, and he is liable for injury to the team caused thereby. Nor can he escape liability because the particular injury occurring could not reasonably have been anticipated; some injury being likely to result from his negligence.[16]

Operators must carefully observe all statutory requirements, but they are not insurers of the safety of persons they meet driving horses on the highways. Even under a statute regulating their conduct when meeting horse-drawn vehicles, and requiring them "to give such personal assistance as would be reasonable to insure the safety of all persons concerned and to prevent accidents," it was held error to charge the jury that it was his duty "to render such personal assistance as would insure the safety of plaintiff." "Effort reasonably directed to insure safety," said the court on appeal, "is a far different proposition from an absolute insurance of such safety, as directed in the instruction." [17]

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14. Tyler *v* Hoover, 92 Neb. 221, 138 N. W. 128.
15. Rochester *v.* Bull, 78 S. C. 249, 58 S. E. 766.
16. Carsey *v.* Hawkins, Tex. Civ. App., 1911, 165 S. W. 64.
17. Craton *v.* Huntzinger, 163 Mo. App. 718, 147 S. W. 512.

But the operator is required to take notice that his machine is liable to scare horses along the highway, and he should keep a proper lookout not to cause injury to others by the frightening of horses.[18]

PASSING AT EXCESSIVE SPEED.

Allegations showing that plaintiff's horse became frightened by the speed at which defendant operated his automobile; that such speed was in excess of six miles an hour, which was in violation of a statute; and that such violation proximately caused the injury complained of, was held to state a cause of action.[19]

Following the rule that when the purpose of a statute is the protection of individuals, one who violates it is liable to those for whose protection it was intended for injuries directly resulting from its violation, the driver of an automobile who passes the driver of a draft animal at a rate of speed prohibited by statute, is liable for such injuries as proximately result because of the excessive speed.[20]

DRIVING ON WRONG SIDE OF ROAD.

Vehicles, whether automobiles, horse-drawn or bicycles, when meeting on the highways, must turn seasonably to the right of the center or traveled portion of the highway, in order to give the other room to pass.[21]

A driver is not necessarily negligent in driving on the left, or "wrong," side of the highway, as he is at liberty to use any part of the highway, except when meeting another vehicle or person, at which time, under the law of the road, he is required to keep to the right.[22]

The driver of a vehicle proceeding on the wrong side of the highway is not liable for injury to another incurred in a col-

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18. Gaskins *v.* Hancock, 156 N. C. 56, 72 S. E. 80.

19. Carter *v.* Caldwell, Ind. 1915, 109 N. E. 355.

20. Schaar *v.* Cornforth, 128 Minn., 460, 151 N. W. 275.

21. Slaughter *v.* Goldberg, Bowen & Co., Cal. App. 1915, 147 Pac. 90 (1915).

22. Giles *v.* Ternes, 93 Kan. 140, 143 Pac. 491; 93 Kan. 435, 144 Pac. 1014.

lision therewith, unless the negligent act of driving on the wrong side was the proximate cause of the injury. There must be a casual connection between the unlawful act and the injury.[23] His presence on that side may be explained and justified.[24]

Where the operator of an automobile is driving on the wrong side of the road at the time he collides with a horse-drawn vehicle, in violation of statute or ordinance, his presence here is held in some states to amount only to prima facie evidence of negligence.[25] But in other states it is held to amount to negligence per se.[26]

As it is some evidence of negligence when it is shown that a person was driving on the wrong side of the road when his vehicle collided with another, so it is evidence of due care that one was driving on the proper side of the road when a collision occurs.[27]

One who neglects to comply with the law of the road and collides with another has the burden of explaining his conduct.[28]

If driving on the left side of the highway is in violation of an ordinance or statute, as, for instance, an ordinance requiring vehicles to be kept as near the right hand curb as possible, when not passing other vehicles ahead, such driver's right are inferior to the rights of travelers going in the opposite direction.[29]

Circumstances may confront a person, and often do, when due care would require him to avoid or relinquish the side of the street or road to which he is otherwise entitled. In such case, he would be required to exercise such care, and, if he failed to do so, he would be liable for negligence, even though he had planted himself upon the side of the street to which he would ordinarily be entitled. In all cases, therefore, the ultimate ques-

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23. Baillargeon *v.* Myers, Cal. App., 1915, 149 Pac. 378; Giles *v.* Ternes, 93 Kan. 140, 143 Pac. 491; 93 Kan. 435, 144 Pac. 1014.

24. Riepe *v.* Elting, 89 Ia. 82, 56 N. W. 285; 26 L. R. A. 769; Hubbard *v.* Bartholomew, Ia. 1913, 144 N. W. 13.

25. Herdman *v.* Zwart, Ia. 1914, 149 N. W. 631.

26. Slaughter *v.* Goldberg, Bowen & Co., Cal. App., 1915, 147 Pac. 90; Moy Quon *v.* Furnya Co., Wash. 1914, 143 Pac 99.

27. Bourne *v.* Whitman, 209 Mass. 155, 95 N. E. 404.

28. Segerstrom *v.* Lawrence, 64 Wash. 245. 116 Pac. 876.

29. Hiscock *v.* Phinney, Wash. 1914, 142 Pac. 461.

tion is: What was required by due care, under all the circumstances confronting the actor at the time? [30]

If one is caused to turn onto the left side of the road by the negligent conduct of a driver he is meeting, he is excused for such violation of the law of the road.[31]

In one case the plaintiff was held excusable for not moving over from the left side of the road, because he could not have done so in time to avoid a collision.[32]

In another case it was held that a person whose property was injured while on the wrong side of the road might recover damages if there was ample room for the party who caused the injury to pass in safety; and that issue was for the jury.[33]

A statute requiring travelers meeting on the highway to "seasonably" turn to the right of the center of the way, means that they shall turn to the right in such season that neither shall be retarded in his progress by reason of the other occupying more than his portion of the road.[34]

A statute providing that "persons on horseback or vehicles meeting each other on the public roads shall give one-half of the same, turning to the right," refers to persons not merely passing in opposite directions, but "coming together in such manner that there would be an actual collision, or an apparent danger of one, if they should pursue their course without change of direction." [35]

A statute regulating the conduct of drivers in overtaking and passing other vehicles on the highway is inapplicable to vehicles meeting and passing.[36]

VIOLATION OF STATUTE OR ORDINANCE.

In some states it is held that the violation by an automobile operator of the terms of a statute or ordinance respecting the

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30. Herdman *v.* Zwart, Ia. 1914, 149 N. W. 631. See also, Slaughter *v.* Goldberg, Bowen & Co., Cal. App., 1915, 147 Pac. 90.

31. Lloyd *v.* Calhoun, Wash. 1914, 139 Pac. 231.

32. Johnson *v.* Small, 5 B. Mon. (Ky.) 27.

33. Clay *v.* Wood, 5 Esp. 44.

34. Segerstrom *v.* Lawrence, 64 Wash. 245, 116 Pac. 876.

35. Hubbard *v.* Bartholomew, Ia. 1913, 144 N. W. 13.

36. Zellner *v.* McTaigue, Ia. 1915, 153 N. W. 77.

operation of automobiles is prima facie evidence of negligence,[37] while in others it amounts to negligence per se.

Be this as it may, it is quite generally held that where the violation of a statute or ordinance proximately results in injury to another, the person guilty of such violation is liable for such injury.[38]

It has been held to be negligence per se for an automobilist to approach a crossing without giving warning thereof, as required by statute;[39] to drive past a horse-drawn vehicle at a rate of speed prohibited by statute, causing such horse to become frightened;[40] to drive on the wrong side of the highway;[41] to fail to turn to the right upon meeting another vehicle on the highway, when it was possible to do so in the exercise of due care;[42] to fail to stop his automobile on signal from the driver of horses so to do;[43] to fail to stop upon meeting a vehicle, the horse drawing which appeared to be frightened;[44] to approach a wagon on the highway without giving warning of his approach;[45] each of which acts constituted a violation of some express statutory provision.

Although a statute does not specifically require an automobile driver to stop his car, or after stopping it to stop his engine, where it does require him to exercise reasonable care to avoid frightening horses or injuring persons driving them, the statute may be violated by a failure to do either or both, if such failure amounts to a want of reasonable care in the circumstances mentioned.[46] This is likewise true under the general rule of the common law requiring the exercise of reasonable care in all circumstances.

Under a statute providing that whenever it shall appear to

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37. Herdman *v.* Zwart, Ia. 1914, 149 N. W. 631.

38. Roberts *v.* Trunk, 179 Mo. App., 358, 166 S. W. 841.

39. Moy Quon *v.* Furnya Co., Wash. 1914, 143 Pac. 99.

40. Carter *v.* Caldwell, Ind. 1915, 109 N. E. 355.

41. Baillargeon *v.* Myers, Cal. App. 1915, 149 Pac. 378.

42. Hubbard *v.* Bartholomew. Ia. 1913, 144 N. W. 13.

43. Union Transfer & S. Co. *v.* Westcott Ex. Co., 79 Misc. 408, 140 N. Y. Supp. 98.

44. Beggs *v.* Clayton, 40 Utah, 389, 121 Pac. 7.

45. Campbell *v.* Walker, 2 Boyce (Del.) 41, 78 Atl. 601.

46. Ellsworth *v.* Jarvis, 92 Kan. 895, 141 Pac. 1135.

the driver of an automobile that a horse is about to become frightened, it is his duty to stop, etc., it has been held that whenever it might, by the exercise of reasonable diligence, appear to the driver of the automobile that the horse is about to become frightened it is his duty to stop, and that he has no discretion as to what he should do.[47]

SUFFICIENCY OF SIGNAL TO AUTOMOBILE DRIVER TO STOP.

Under a statute requiring the driver of any automobile, when signaled by the driver of any vehicle propelled by horses, to stop his automobile until the other vehicle has passed, it was held insufficient for an occupant of a horse-drawn vehicle other than the driver to give the signal.[48]

In the case last cited the court in part said: "The driver is named as the responsible party required to signal and whose signal is required to be noticed by the other driver; and thus by necessary implication the right of any other person, occupant or bystander to give the statutory signal is excluded. And this is so for good reasons. The plaintiff is the person who was responsible for the manner in which this horse was controlled. It is his negligence or contributory negligence for which he is held responsible. It is his horse. As an owner he is presumed in law and in fact to know it and its characteristics, habits, and disposition, gentleness or viciousness, better than any other person, and sense more fully and quickly than any occupant of the rig an actual dangerous situation. He knows, or is presumed to know, when he has control of the animal. * * * He must know that the automobile driver must look to him, as the person in control of his part of the situation, as the proper person to give and charged with the duty of giving the warning signal, and until such warning is given by signal, shouting or otherwise, the automobile driver had the right to assume it was unnecessary to stop, so long as he was using due care and ordinary caution not to frighten the horse in passing."

In a criminal prosecution for the alleged violation of a stat-

47. Stout *v.* Taylor, 168 Ill. App., 410.

48. Messer *v.* Bruening, 25 N. D. 599, 142 N. W. 158, 48 L. R. A. (N. S.) 945.

ute [49] requiring the driver of an automobile to, "on signal by raising the hand, from a person riding, leading or driving a horse or horses or other animals, bring such motor vehicle immediately to a stop," it appeared that defendant, driving an automobile, met a wagon and team, the driver of which called to him to stop, and another occupant of the wagon raised his hand as a signal for him to stop. It was held that a conviction could not be sustained; that the statute was both penal and criminal, and must be strictly construed in favor of the defendant; that in view of the plain provision of the statute referring to the giving of a signal by a designated person, the provision could not be expanded to include a signal given by another; and that the evidence was, therefore, insufficient to sustain a conviction.[50]

On the other hand, other courts have held that it is sufficient if an occupant of a horse-drawn rig other than the driver gives the signal.[51]

In one case the court said: "The statute must have a sensible construction. In our opinion it is not essential that the one holding the lines give the signal. It is enough if the signal is given by an occupant of the rig so that the auto driver is given fair warning that he should stop; and he should not be heard to quibble because the signal does not come from the driver." [52]

Under a statute providing that any person operating a motor vehicle shall, upon meeting any person or persons driving a horse or horses, on any public highway, "upon request or signal by putting up the hand from any such person or persons, so * * * driving any horse or horses, * * * immediately bring his vehicle to a stop," etc., it was held that the word "driving" is not confined to the person alone in the dorse-drawn vehicle who holds the lines, but includes any occupant of such vehicle, and such signal given by any occupant thereof is sufficient. This was so held in a prosecution for violation of such statute.[53]

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49. Laws Mo. 1911, p. 326, Sec. 8.
50. State *v.* Wilson, Mo. App. 1915, 174 S. W. 163.
51. Schaar *v.* Comforth, 128 Minn. 460, 151 N. W. 275.
52. Schaar *v.* Comforth, 128 Minn. 460, 151 N. W. 275.
53. State *v.* Goodwin, 169 Ind. 265, 82 N. E. 459.

In an action to recover for the loss of a horse, it appeared that plaintiff was driving the horse on a public highway, and met defendant driving an automobile; that when the vehicles were within 15 or 20 steps of each other, the horse showed fright, and the driver shouted "Look out!" that defendant then turned and passed on the right side of the road, and when the car was opposite the horse, the latter turned and plunged into a wire fence, and was so badly injured as to render it useless. The only charge of negligence alleged was the failure of defendant to stop his car when the driver called to him to "look out." Defendant stated that he heard the call, and interpreted it to mean to turn out of the beaten road, which he immediately did. The action was brought under a statute regulating the conduct of the driver of any automobile when approaching horse-drawn vehicles, and declaring that "if requested by signal or otherwise by the driver of such horse or horses, shall proceed no farther," etc. Held, that these words were insufficient as a signal within the meaning of the statute. "According to dictionary definitions," said the court, "the meaning of the words is to exercise care, rather than to proceed no farther. The equivalents of the phrase are, 'take care,' 'be watchful,' 'take heed,' and 'act with prudence.' In their popular signification, and alone, they do not import a request to stop or stand still." [54]

When no statutory signal is given the question of the automobile operator's negligence must be measured by the common law standard of due care.[55]

Contributory Negligence of Driver of Horses.

In seeking to determine whether a plaintiff was contributorily negligent his conduct must be considered in view of the situation as it appeared to him at the time; not as it might appear after the occurrence and in view of the whole situation. If, for instance, his conduct in turning to the left of the highway upon meeting the defendant, was that of a reasonably prudent man in view of the circumstances, he was not negligent.[56]

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54. Sterner *v.* Issitt, 89 Kan. 357, 131 Pac. 551.
55. Messer *v.* Bruening, N. D. 1913, 142 N. W. 158.
56. Lloyd *v.* Calhoun, Wash. 1914, 139 Pac. 231.

Where there was ample room for an automobile to pass the driver of a team without the latter turning from his course, it was held that the latter might assume that the driver of the machine would avail himself of the ample opportunity to pass in safety, and that he was not guilty of contributory negligence in keeping a direct course along the street.[57]

It is not negligence as a matter of law for a man to drive a team that he knows is afraid of automobiles and might become unmanageable upon meeting one on the highway, where he is likely to meet automobiles.[58]

Where the operator of an automobile discovered the peril of the plaintiff in time to have avoided injuring her by the use of every means in his power, consistent with the safety of himself and others, the previous negligence of plaintiff in going on the highway in a buggy drawn by an unruly horse, would not bar a recovery, as such negligence on her part, in the circumstances, become a condition and not the proximate cause of the injury.[59]

Where deceased was riding a fine, highbred mare, very quick of action and difficult to control when excited or frightened, which he had known intimately for several years, and had frequently ridden her, and knew her peculiar characteristics, and that she was afraid of automobiles, and upon seeing an approaching automobile, reined the mare on the side of the road, facing the approaching car, and did nothing to indicate to the driver of the car that he had the least fear of his ability to manage the mare, and sat and waited for the automobile, and the mare showed no signs of fright until the car was almost opposite, when she wheeled and commenced a struggle in which deceased was killed, it was held that he was contributorily negligent, and that no recovery could be had for his death.[60]

When one is charged with negligence in driving a horse on the highways, his knowledge of the character and disposition of the horse may be shown as bearing on the question. If he

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57. Savoy *v.* McLeod, Me. 1913, 88 Atl. 721.

58. Butler *v.* Cabe, Ark., 1914, 171 S. W. 1190, L. R. A. 1915 C, 702.

59. Blackwell *v.* McGrew, Tex. Civ. App. 1911, 141 S. W. 1058.

60. Dreier *v.* McDermott, Ia. 1913, 141 N. W. 315.

understood that the horse was gentle and kind, and had been driven by a woman, evidence of that sort would tend to show that he was in the exercise of due care. In this connection, what the vendor of the horse told such person a short time before the act complained of, is competent to show what such person understood the nature and character of the horse to be, and whether he was in the exercise of due care in driving him.[61]

The negligence of the plaintiff in failing to drive his team farther from the road when defendant was about to pass in his automobile, was no defense where, after seeing the peril created by the fright of the team, defendant increased his speed and the noise of the machine, which caused the team to run away.[62]

St. Louis, Mo

C. P. BERRY.

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61. Ferryall *v.* Youlden, 76 N. H. 548, 85 Atl. 786.

62. Carsey *v.* Hawkins, Tex. 1914, 163 S. W. 586.